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MARC WANGSGARD

November 2, 1995

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John H. Mabey, Jr., Esq.
Assistant Attorney General
1636 W. North Temple
Salt Lake City, UT 84116

Re: Water Commissioner - Box Elder Creek

Dear John:

This letter will formalize our earlier discussion concerning the need for a water commissioner to distribute and administer the waters of Box Elder Creek. This letter is offered on behalf of Brigham City Corporation, a major water user on Box Elder Creek and its tributaries.

The City is mindful that under Utah Code Ann. § 73-5-1 the state engineer has the discretion to decide whether or not it is prudent to appoint a water commissioner for all or only a part of the Box Elder Creek system. The fact there is not a commissioner at this time does not mean he has decided against appointing one. My understanding is that this question has not been posed to the state engineer.

Relevant factors which the City would like to be considered include:

1. The water rights in Box Elder Creek are defined and set forth in a Proposed Determination Book that was published October 1, 1990 (Book No. 1, Box Elder County Division, Brigham City-Deweyville Subdivision).
2. Utah Code Ann. § 73-4-11 provides that the state engineer shall distribute the waters in accordance with the proposed determination unless modified by a court order until a final decree is rendered. This is not being done.
3. The Box Elder Creek waters are distributed by a water master employed by the Box Elder Creek Water Users Association. The water master is not appointed by consensus of all affected users. The hiring and firing is at

the discretion of the individuals who sit on the Association board. There are other irrigation companies and many water users whose interests are not represented by the Association and are not protected by such an arrangement.

4. Future disputes will be avoided through the orderly distribution of water by a neutral, state-appointed official. The present ongoing litigation in the case Walker, et al v. Box Elder Creek Water Users Ass'n., et al, is a prime example.

The City would like the state engineer to seriously consider this request and respond formally in writing.

Sincerely,

WILLIAMS & HUNT



Marc Wangsgard

MTW/bar

cc: Mr. Robert Fatheringham

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John H. Mabey, Jr., Esq.

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bcc: Jeff R. Thorne, Esq.
Mr. Jim Fisher
Mr. Bruce Leonard